

Before the  
Administrative Hearing Commission  
State of Missouri



BANNER DESERT MEDICAL CENTER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 15-0012 SP
	)	
DEPARTMENT OF SOCIAL SERVICES,	)	
MISSOURI MEDICAID AUDIT AND	)	
COMPLIANCE UNIT,	)	
	)	
Respondent.	)	

**DECISION**

We dismiss the complaint filed by Banner Desert Medical Center (“Banner”) for lack of jurisdiction.

Procedure

On January 5, 2015, Banner filed a complaint by certified mail to appeal a final decision of the Department of Social Services (the “Department”), Missouri Medicaid Audit and Compliance Unit (“MMAC”) denying a claim for payment. On January 23, 2015, the Department filed a motion to dismiss the complaint and suggestions in support. We notified Banner that any response to the motion should be filed by February 11, 2015, but it filed nothing.

We treat the Department’s motion as one for summary decision because it relies on evidence outside of the pleadings.<sup>1</sup> In order to prevail on a motion for summary decision, the

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<sup>1</sup> 1 CSR 15-3.436(4)(A). All references to “CSR” are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Department must set out undisputed facts that entitle it to a favorable decision.<sup>2</sup> Parties may establish facts by admissible evidence.<sup>3</sup>

Attached in support of the Department's motion is an affidavit with authenticated business records of the Department, which are admissible evidence. Section 536.070(9) and (12).<sup>4</sup> We make the following findings of fact based on that evidence and the pleadings filed by Banner.

### **Findings of Fact**

1. Banner is a hospital located in Mesa, Arizona, and is an out-of-state provider in the Missouri Medicaid (Title XIX) program. As such, Banner submitted a claim for over \$500.

2. On September 22, 2014, MMAC notified Banner, via United States mail, of its final decision to deny the aforementioned claim for payment for participant services rendered at Banner because the services did not meet the criteria to be deemed out-of-state emergency services ("final decision letter").<sup>5</sup>

3. The final decision letter also notified Banner:

The overpayment and prepayment review decisions are final decisions regarding administration of the medical assistance program in Missouri. Missouri Statute, Section 208.156, RSMo (2000) provides for appeal of this decision. If you were adversely affected by this decision, you may appeal this decision to the Administrative Hearing Commission.

To appeal, you must file a petition with the Administrative Hearing Commission within 30 days from the date of mailing or delivery of this decision, whichever is earlier; except that claims of less than \$500 may be accumulated until such claims total that sum and, at which time, you have 90 days to file the petition. If any such petition is sent by registered mail or certified mail, the petition will be deemed filed on the date it is mailed. If any such petition is sent

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<sup>2</sup> 1 CSR 15-3.446(6)(A).

<sup>3</sup> 1 CSR 15-3.446(6)(B).

<sup>4</sup> RSMo Supp. 2013. Statutory references are to the 2000 Missouri Revised Statutes unless otherwise noted.

<sup>5</sup> The decision was characterized as an overpayment assessment by MMAC; however, a careful reading of the complaint and correspondence convinces us that the decision was to deny payment for a claim submitted by Banner on a Missouri Medicaid participant. Banner is not subject to recoupment.

by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the Commission. Appealing this decision can only be made to the Administrative Hearing Commission and not through Missouri Medicaid Audit & Compliance or MHD.<sup>[6]</sup>

4. According to its complaint, Banner, through its contractor Cardon Outreach, “RECEIVED DENIAL LETTER DATED 9.22.2014” on September 29, 2014.

5. Banner filed its complaint with this Commission by certified mail on January 5, 2014, more than thirty days after September 22, 2014.

### **Conclusions of Law**

The Department’s motion asserts that Banner’s complaint is untimely filed. Section 208.156, the source of our jurisdiction in Missouri Medicaid/MO HealthNet provider appeals, requires that a petition for review must be filed with this Commission within “thirty days from the date of mailing or delivery of a decision[.]”<sup>7</sup> The final decision letter apprised Banner of this requirement in the very language required by law.<sup>8</sup>

Because the Department sent its decision letter on September 22, 2014, Banner had thirty days from that date to file its petition for review. Banner filed its complaint on January 5, 2015, 105 days after the mailing date of the final decision letter.

The untimely filing of Banner’s complaint deprives us of jurisdiction to hear it.<sup>9</sup> If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.<sup>10</sup>

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<sup>6</sup> According to Banner’s complaint, the denied claim was for \$1,081.90, thus it was not subject to the tolling allowed for claims under \$500.

<sup>7</sup> Section 208.156.8.

<sup>8</sup> See § 621.055.3, RSMo Supp. 2013.

<sup>9</sup> *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. 1988); *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1984).

<sup>10</sup> *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).

### **Summary**

Banner's complaint was untimely filed. We dismiss it for lack of jurisdiction, and cancel the hearing.

SO ORDERED on April 21, 2015.

*\s\ Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner